



U.S. Department of Justice
Office of Information Policy
Suite 11050
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Washington, DC 20530-0001

Telephone: (202) 514-3642

February 18, 2014

Mr. Thomas Savoca
Register No. 20970-008
United States Penitentiary
Post Office Box 7000
Florence, CO 81226-7000

Re: Appeal No. AP-2014-00808
Request No. 1234287
SRO:KRP

VIA: U.S. Mail

Dear Mr. Savoca:

You appealed from the action of the Federal Bureau of Investigation on your request for access to records concerning a named third party.

After carefully considering your appeal, I am affirming the FBI's action on your request. The Freedom of Information Act provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities.

To the extent that non-public responsive records exist, without consent, proof of death, official acknowledgment of an investigation, or an overriding public interest, disclosure of non-public law enforcement records concerning an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(7)(C). Because any non-public records responsive to your request would be categorically exempt from disclosure, the FBI properly asserted Exemption 7(C) and was not required to conduct a search for the requested records. See Blackwell v. FBI, 646 F.3d 37, 41-42 (D.C. Cir. 2011) (upholding agency's refusal to conduct a search for law enforcement records pertaining to named third parties because such records are categorically exempt from disclosure in the absence of an overriding public interest).

To the extent that your request seeks access to records that would either confirm or deny an individual's placement on any government watch list, the FBI properly refused to confirm or deny the existence of any records responsive to your request because the existence of such records is protected from disclosure pursuant to 5 U.S.C. § 552a(j)(2) & 5 U.S.C. § 552(b)(7)(E). FOIA Exemption (b)(7)(E) concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions. This response should not be taken as an indication that records do or do not exist. Rather, this is the standard response made by the FBI.

 (Attachment 1)
 

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I note that you have cited Roth v. United States Department of Justice to support your contention that the FBI maintains exculpatory information concerning you and that the public interest in such information outweighs any privacy interests of third parties. Please be advised, however, that before the government is required to consider a public interest based on alleged government misconduct, you "must produce evidence that would warrant a belief by a reasonable person that the alleged [g]overnment impropriety might have occurred." NARA v. Favish, 124 S. Ct. 1570, 1582 (2004). Although you claim that the records responsive to your request contain exculpatory material that should have been disclosed during your criminal trial, you provide no support for this contention and thus you have not met the standards set forth in Favish.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of the FBI in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 301-837-1996; toll free at 1-877-684-6448; or facsimile at 301-837-0348.

Sincerely,



Sean R. O'Neill
Chief

Administrative Appeals Staff

